IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC.CIVIL APPLICATION NO.73 OF 2004

Mrs.Rekha Hemant Haveri ...Applicant

Vs.

Hemant Y. Haveri ...Respondent

CORAM: A.S.OKA, J.
DATED: AUGUST 30, 2004.

P.C.:

1. Heard Counsel appearing for the parties. The applicant is the wife and the respondent is the husband. The respondent has filed a Petition under Section 12 (1) (c) of Hindu Marriages Act, 1955 in the Family Court at Bandra Mumbai. The Applicant-wife has filed a Criminal Case No.55 of 2004 for maintenance under Code of Criminal Procedure, 1973 and the said application is pending in the court of learned Judicial Magistrage First Class, Tasgaon, District Sangli. The present Application is filed praying for transfer of the Petition filed by the Respondent in the Family Court at Bandra, Mumbai to the Court of District Judge, Sangli.

2. The case of the Applicant is that she is residing at village Kavathe Ekand Taluka Tasgaon Dist. Sangli along with her parents. The contention of the Applicant is that it is very difficult for her to undertake travelling on every date for attending the Family Court at Mumbai. The travelling distance between Kavathe Ekand to Mumbai is 450 to 500 kms.

Her case is that she has no independent source of income.

3. The Respondent has filed Misc.Civil Application No.76 of 2004 praying for transfer of the Application made by the Applicant for maintenance which is pending in the court of Judicial Magistrage First Class, Tasgaon, District Sangli to the Family Court at Mumbai.

4. The present Application is strongly opposed by the Respondent-husband. He has placed reliance on the Judgment of learned Single Judge of this Court (Coram:Khandeparkar,J.) dated October 22, 2002 in Misc.Civil Application Nos.70 and 90 of 2002. He also pointed out that the said Judgment of the learned Single Judge is confirmed by the Apex Court in a Special Leave Petition. The learned Counsel relied upon section 21-A of the said Act of 1955. He submitted that the Petition filed by the Respondent is prior in time. Therefore, the same cannot be transferred to the Court at Sangli and the Application for maintenance filed by the Applicant being the Application filed subsequently, the same will have to be transferred to the Family Court at Bandra, Mumbai.

5. In so far as the Judgment of learned Single Judge of this Court (Coram:Khandeparkar,J.) is concerned, it is necessary to refer to paragraph Nos.2 and 3 of the said Judgment which read thus :

. "...From the facts disclosed in the Misc.Civil Application No.90 of 2002, which are not controverted by the respondent, the Petitioner has made out a case for transfer of the proceedings from the Nashik Court to the Family Court at Bandra, Mumbai. As fairly conceded by the learned Advocate for the applicant, consequent to such transfer the respondent would certainly be entitled for travelling expenses bearing in mind the decision of the Apex Court in Shiv Kumari Devenndra Ojha Vs. Ramajor Shitla Prasad Ojha and others, reported in (1997) 2 S.C.C. 452.

. It is also pertinent to note that the proceedings initiated by the applicant in Misc.Civil Application No.90 of 2002 in the Family Court at Bandra, Mumbai were prior in time to the proceedings initiated by the respondent at Nasik. Being so, considering the provisions of Section 21 of the Hindu Marriage Act, and since the basic issue in both the proceedings being similar, both the proceedings are required to be heard by the same Court and to be disposed of simultaneously..."

6. It is very clear that the the facts disclosed in Application for transfer filed by the Applicant-husband before the learned Single Judge were not controverted by the respondent-wife before the learned Judge. In the case before the learned Single Judge the husband had filed the petition

in the Family at Bandra for declaration that the marriage is null and void. The wife had filed a petition for similar reliefs in the court at Civil Judge (S.D.) at Nasik. The learned Single Judge passed the order in the light of uncontroverted facts.

8. The Reference will have to be made to section 21-A of the said Act of 1955 which read thus :

21-A. Power to transfer petitions in certain cases - (1) Where -

(a) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce under Section 13, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce under Section 13 on any ground, whether in the same district court or in a different district court, in the same State or in a different State.

. the petitions shall be dealt with as specified in sub-section (2).

(2) in a case where sub-section (1) applies-

(a) If the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court;

(b) if the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the court or the Government as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit

> or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.

. Section 21-A will have application where there are more than one Petitions filed for judicial separation and/or decree of divorce. The said Section will not have any application to the facts of this case as the only petition pending under the Hindu Marriage Acat, 1955 is for decree of nullity.

9. The Applicant-wife is residing in a village Kavathe Ekand, taluka Tasgaon of District Sangli. She is residing with her parents. Tremendous inconvenience will be caused if she is required to undertake travelling on every date fixed in Family Court,Bandra Mumbai. Convenience of wife is certainly one of the grounds for invoking power under Section 24 Code of Civil Procedure, 1908. In view of this position this is a fit case where power under Section 24 of the Code of Civil Procedure, 1908 should be exercised.

10. Hence I pass following order:

. M.J.Petition No.A-17 of 2004 pending in the Family Court, Bandra, Mumbai is hereby transferred to the Court of Civil Judge, (S.D.) Sangli. After transfer of the said Petition from Family Court, Bandra, Mumbai to court of Civil Judge (S.D.),Sangli, the learned Judge will issue notice to both the parties.

. There will be no as order to costs.

Judge.